

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-9 and 12-13 are pending in this application. No claims are amended, cancelled or added. Claim 1 is the sole independent claim.

Examiner's Response to Argument Filed January 7, 2008

The Office Action stated that Applicants' arguments filed January 7, 2008 have been fully considered but are not considered persuasive; that Applicant appears to be relying on the filing date of the national stage PCT document PCT/DE2003/002482 to overcome the rejection of claims over prior art WO 2004/020659; that this is not persuasive since PCT/DE2003/002482 is not in English and an English-language certified translation is not present in the case; and that, therefore, Applicant cannot rely on the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 C.F.R. 1.55.

Therefore, Applicants submit a copy of the certification by the English translator, in addition to the English translation, in order to perfect priority to PCT/DE2003/002482.

Rejections under 35 U.S.C. § 102

Feucht et al.

Claims 1-9 and 12-13 stand rejected under 35 U.S.C. § 102(e) as being anticipated by International Publication No. WO 2004/20659 to Feucht et al. Applicants respectfully traverse this rejection for the reasons detailed below.

The Office Action stated that the applied reference has a common inventor with the instant application; that, based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. § 102(e); and that this rejection might be overcome either by a showing that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another”.

As noted above, a copy of the translator’s certification that the previously filed English translation of PCT/DE2003/002482 is a true and accurate translation is submitted concurrently with this response. The Applicants note that Feucht purports to have a publication date of March 11, 2004, which is the first time that Feucht was published in English. The Applicants further note that the present application was filed in the USPTO on February 7, 2005, and entered the national stage under 35 U.S.C. § 371 as PCT International Application No. PCT/DE2003/002482 which has an International filing date of July 23, 2003, designating the United States of America.

Accordingly, due to the filing date of the present application, Feucht fails to qualify as “prior art” under any section of 35 U.S.C. § 102 including § 102(e). The publication date of Feucht (March 11, 2004) is after that of the present application’s effective U.S. filing date (July 23, 2003). Even if the Examiner were correct (which Applicants do not admit) and the publication were entitled to a § 102(e) date of July 23, 2003, the date is the same as the effective US filing date of the present application, and therefore, does not qualify as prior art under any section of § 102.

The Applicants, therefore, respectfully request that the rejection to Claims 1-9 and 12-13 under 35 U.S.C. § 102(e) be withdrawn.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) hereby petition(s) for a one (1) month extension of time for filing a reply to the outstanding Office Action and submit the required \$120.00 extension fee herewith.

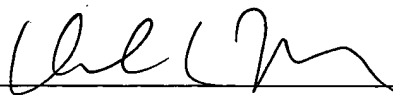
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Erin G. Hoffman, Reg. No. 57,752, at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By



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DJD/EGH:ljs

Enclosure: Copy of Translator's Certification of PCT/DE2003/002482